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1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF NEW YORK

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3 SERGEY LEONTIEV,

4 Plaintiff,

New York, N.Y.

5 v.

16 Civ. 3595 (JSR)

6 ALEXANDER VARSHAVSKY,

7 Defendant.

8 -----x

9 August 4, 2016
4:15 p.m.

10 Before:

11 HON. JED S. RAKOFF,

12 District Judge

13
14 APPEARANCES

15
16 GIBSON, DUNN & CRUTCHER, LLP

17 Attorneys for Plaintiff

18 BY: ROBERT L. WEIGEL

19 ESTER MURDUKHAYEVA

20 ALISON L. WOLLIN

21 DEBEVOISE & PLIMPTON, LLP

22 Attorneys for Defendant

23 BY: SEAN HECKER

24 NICHOLAS C. TOMPKINS

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(Case called; all parties present)

THE COURT: Good afternoon. We are here on a motion to dismiss. Let me hear first from moving counsel.

MR. HECKER: Thank you, your Honor.

With respect to plaintiff's second claim for intentional --

THE COURT: That's the only claim that we have on today's argument.

MR. HECKER: That's correct, Judge.

There are four elements easily stated: The first is that plaintiff must allege extreme and outrageous conduct; intent to cause or disregard a substantial probability of causing severe emotional distress; a causal connection between the conduct and the injury; and severe emotional distress.

THE WITNESS: And it is really the first element that is most at issue, although we also take issue, as the court has seen in our papers, with the allegation here that there is a sufficiently particularized pleading with respect to the emotional distress allegedly caused. This is a disfavored tort action in New York, and the Court of Appeals has repeated numerous times, most recently this year, that they have never seen a set of allegations sufficiently outrageous in terms of the misconduct to survive dismissal at the pleading stage. It depends which cases make their way up, but this court noted a few years ago in the *Kiser* case and *Chanko* case earlier this

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1 year the Court of Appeals repeated that line, and the language
2 they use in describing the pleading standard is that the
3 conduct must be so outrageous in character and so extreme in
4 degree as to go beyond all possible bounds of decency and to be
5 disregarded as atrocious and utterly intolerable in a civilized
6 society. It is a whole lot of adjectives and we recognize
7 there is some subjectivity in it, but I think every
8 articulation of the standard recognizes that we are talking
9 about an extremely high bar.

10 THE COURT: I am glad the Court of Appeals referred to
11 a civilized society rather than the streets of New York.

12 MR. HECKER: I think there is no question we are
13 talking about a very narrow category of cases where the conduct
14 alleged is sufficiently outside the bounds of decency as to
15 survive a motion to dismiss. And the plaintiffs here, in their
16 briefs, really don't mention that heightened pleading standard.
17 Instead, what they do is they latch on to a couple of cases in
18 particular where courts have addressed the question of what
19 happens when, in the context of claims where the conduct dates
20 back a number of years, you can look back and find a continuous
21 course of conduct typically in the sexual harassment context or
22 something analogous. So there have been cases where they have
23 focused on conduct that could allege to be a campaign over
24 time. But even if you could construe a couple of discrete acts
25 and then call it a campaign, that is not enough. It still has

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1 to be conduct that ultimately rises to this very heightened
2 standard.

3 Here, what is alleged principally relates to
4 statements that were made allegedly by Mr. Varshavsky during
5 three business meetings, all scheduled in advance by
6 experienced business people, including the plaintiff, who
7 founded and was the chair of one of the larger banks in Russia,
8 Probusinessbank. These meetings were not the result of
9 stalking episodes or ambushing. They were meetings set in
10 advance, and they were held to discuss this debt.

11 And the question that was discussed repeatedly between
12 the parties was whether our client could produce documentary
13 evidence and explain a legal theory pursuant to which
14 Mr. Leontiev would be personally held liable on the debt. He
15 doesn't allege that he wasn't aware of the debt or he wasn't
16 familiar with the circumstances of the debt, and the documents
17 they have attached to the complaint reflect loan guarantees
18 from Probusinessbank, his bank.

19 So this is not some random person plucked off the
20 street at a vulnerable time in his life as part of an extortion
21 racket or racketeering scheme, as plaintiffs claim in their
22 papers, and the complaint doesn't allege as much. What you see
23 are claims, in the context of these discussions, that our
24 client made a threat to instigate a criminal prosecution of
25 Mr. Leontiev in a context where there was an ongoing criminal

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1 investigation for embezzlement involving other bank employees.
2 Plaintiff has alleged that that was baseless and would have us
3 read into it a history of baseless prosecutions of executives
4 in the context of closed businesses. Mr. Leontiev fled the
5 country not because of meetings with my client, but because his
6 bank's closure and his fear associated with that, according to
7 the complaint.

8 The second meeting occurs in London, more or less the
9 same conversation about this same debt and efforts to have a
10 payment schedule arranged.

11 And the third, and the third is the most important,
12 the third meeting was arranged through counsel, held at Gibson
13 Dunn's offices in New York. This is purportedly after the
14 first two episodes of this campaign of harassment that caused
15 him severe emotional distress. Our client was invited to a
16 meeting at Gibson Dunn to talk about this alleged debt and,
17 again, the complaint alleges that demands were made on our
18 client --

19 THE COURT: I heard that the offices of Gibson Dunn
20 are very intimidating.

21 MR. HECKER: I am sure it was intimidating, but it was
22 plaintiff's home turf. And I think context here is quite
23 important, because the notion that this meeting was part of a
24 campaign of harassment I think is belied by the circumstances
25 of these discussions between experienced business people,

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1 ultimately involving experienced and able counsel, and meetings
2 held at Gibson Dunn. In fact, it is at Gibson Dunn where, if
3 the court looks at paragraph 31 of the complaint, it is alleged
4 that Mr. Varshavsky maintained that Mr. Leontiev owed him \$83
5 million and demanded immediate payment claiming "needs security
6 because what if, God forbid, you die tomorrow." Now, in the
7 complaint, there is no allegation that that is a death threat,
8 although in plaintiff's papers to this court it suggested it is
9 a thinly veiled death threat. They could have alleged that it
10 was understood to be a death threat or intended to be a death
11 threat, but they did nothing of the sort.

12 THE COURT: Let me pause on that, because I raise this
13 really as much for your adversary as for you. While the cases
14 are perhaps not totally consistent, as one would expect under
15 New York case law, where this kind of claim has survived a
16 motion to dismiss, it has often been because physical threats
17 were involved. I don't see how this can be read as a physical
18 threat and, as you point out, the complaint doesn't claim it
19 was.

20 But putting aside that, because they could amend the
21 complaint or whatever, but what they appear to be saying, even
22 taking it most favorably to plaintiff -- that's why I am
23 raising it, in case they want to convince me otherwise -- is,
24 I've got to get my money now because who knows what might
25 happen tomorrow. One would think that's even -- even in a more

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1 cordial conversations than were going on here, it is not, one
2 would think, unusual to say, you know, I know you think you are
3 going to live forever, but God forbid you should die tomorrow,
4 I need my money, and that appears to be what he is saying.

5 MR. HECKER: I couldn't agree more. The use of the
6 word "security" makes that clear, makes that clear. It is that
7 there is a discussion about a disputed debt; and if an
8 individual is going to be the one on the hook to repay it, the
9 question is, is there security for repayment?

10 THE COURT: Am I right that that is the only thing in
11 the complaint that even your adversary suggests is a physical
12 threat?

13 MR. HECKER: That's correct, your Honor, and it is not
14 alleged in the papers, in the complaint as such, but it is
15 referral to as a thinly veiled threat in their brief. I agree
16 with the court, I think that many of the cases that have
17 survived motions, for example, the plaintiff cites *Allam v.*
18 *Meyers*, a case before Judge Wood.

19 THE COURT: There was a direct threat of violence.

20 MR. HECKER: And in fact there was violence on top of
21 the threats of violence. There were acts of physical violence,
22 including kicking, hair pulling, grabbing, pushing, sexual
23 violence and then, on top of it, a sustained emotional abuse.
24 The case involving *Eves v. Ray*, a Second Department case,
25 involved a litigant going after the lawyer for an ex-spouse,

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1 making physical threats to the lawyer, stalking the lawyer, and
2 in fact doing so even after a protective order was put in
3 place. It is nothing like the context we have here, which
4 builds up to a meeting at Gibson Dunn. It is just a completely
5 different context, and we have cited the court to --

6 THE COURT: Both of those cases, and many of the other
7 cases where the allegations have survived motions to dismiss,
8 although they are far outnumber by the cases where the motion
9 has been granted, are cases involving spouses or ex-spouses,
10 with all the emotional freight, all the potential for violence
11 that that highly wrought context, as a matter of common
12 experience, often engenders, and this is not that context at
13 all.

14 MR. HECKER: That is absolutely right. The additional
15 case plaintiff cites, *Green v. Fishbein*, involves a
16 landlord/tenant dispute where a series of frivolous lawsuits
17 are brought against the tenant to try to get the tenant out of
18 his home. There is something about the power dynamic and
19 intense emotional aspect of having someone to try to extricate
20 you from your home is decidedly different from the
21 circumstances here.

22 In fact, it is interesting and, in fact, maybe even
23 timely, to look at the case involving Donald Trump which did
24 not survive a motion -- I mean, which did not survive a motion
25 to dismiss there, and that's *Kay v. Trump*, which was a First

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1 Department case from a few years ago. There, the plaintiff had
2 alleged that Trump had attempted to have her arrested, had
3 initiated a couple of different frivolous suits against her,
4 had frightened her and her daughter, and there, too, the
5 allegations were found insufficiently extreme. And there I
6 think one might argue that the context was more sympathetic to
7 this one involving two experienced business people. So, your
8 Honor, for --

9 THE COURT: It would be wrong for me to distinguish
10 that case on the ground that the defendant is well known to be
11 capable of saying anything.

12 MR. HECKER: It is. It would be, Judge.

13 MR. WEIGEL: Not necessarily inaccurate.

14 MR. HECKER: Your Honor, we have a second independent
15 basis for dismissal based on the very conclusory nature of the
16 claims of emotional distress allegedly suffered here,
17 particularly in the context where it is quite clear that the
18 plaintiff was already fleeing the country for reasons having
19 nothing to do with my client. There really isn't any
20 particularized pleading with respect to how these efforts to
21 recoup on the debt or the attendant threats that are alleged
22 caused any specific emotional distress, and I think that is
23 important because the reason this tort has long been disfavored
24 and didn't exist in the earliest part of the 19th century is
25 very much because of a recognition that it is quite difficult

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1 to verify claims of purely emotional injuries without physical
2 violence. So I think this is actually exactly the kind of case
3 that this doctrine of disfavoring these torts is there for, and
4 I think if you look at the allegations, they are quite cursory
5 in nature and they don't particularize the way in which the
6 alleged conduct here has any causal connection to the harm.

7 THE COURT: All right. Thank you very much.

8 Let me hear from plaintiff's counsel.

9 MR. WEIGEL: Thank you, your Honor.

10 It is interesting that they try and characterize this
11 as a series of business meetings, because that's not what is
12 allege in the complaint.

13 My client was summoned to go to Mr. Varshavsky's
14 office, a man he had never met. Mr. Varshavsky tells him he
15 has to pay him \$100 million. He also offers that if my client
16 gives him half his bank, he will make the problems go away.

17 My client does not give him half the bank, and the
18 bank is seized. My client travels to London, Mr. Varshavsky
19 travels to London, says, I want \$83 million, pay it to me. He
20 then makes threats that he will institute criminal charges,
21 criminal charges that we allege in the complaint would be
22 false. He also threatens to put my client on a terrorism watch
23 list, and he says, Give me \$40 million.

24 THE COURT: Let me just go back a step.

25 Where was your client located? Where was he residing

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1 at the time of the second and third meeting?

2 MR. WEIGEL: By the third meeting, your Honor, he was
3 in New York. That was a meeting that took place in my office.
4 Although there were numerous communications between
5 Mr. Varshavsky and Mr. Leontiev and Mr. Leontiev's business
6 partner that are alleged in the complaint as well, I am not 100
7 percent sure, but I believe Mr. Leontiev was in London at the
8 time -- he clearly was in London at the time. I don't know if
9 he had moved to the United States at that point in time or not.

10 THE COURT: I guess the reason I am asking this is
11 what would it matter if, assuming for the sake of argument that
12 the defendant had the power to institute false criminal
13 proceedings in Russia, your client is already alienated from
14 Russia and its government in any event. Why would it matter to
15 him?

16 MR. WEIGEL: Why would it matter to him?

17 THE COURT: Yes.

18 MR. WEIGEL: Well, first off, nobody wants to be
19 charged with a crime.

20 THE COURT: Well, but, you know, that's true, but we
21 are talking about intolerable, the very high standard here, and
22 it is well known that some even utterly saint-like people who
23 leave dictatorial societies are often charged with this, that,
24 or the other thing, on the most frivolous grounds whatsoever,
25 but that doesn't mean that that keeps them in such a state as

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1 to constitute the very high standard for this tort.

2 MR. WEIGEL: I agree it is a high standard, your
3 Honor, but the combination of threatening to invoke criminal
4 proceedings that were baseless, putting him on a terrorism
5 watch, list -- Russia, it may be lawless, but it is a real
6 country and it has power to restrict somebody's travel by
7 putting in a notice to Interpol. They can essentially make it
8 so that my client can't travel by air.

9 This man has pursued him. He is a powerful man. It
10 is alleged in the complaint, and we certainly will be able to
11 demonstrate that he is very well connected at the highest
12 levels of the Russian government. He transacts numerous
13 businesses with the former KGB. He sells them cars. He does
14 business with the Rotenbergs, who are on the list of people who
15 are sanctioned. He is a very powerful man. And the evidence
16 will show, if we are allowed to take discovery, that he has the
17 capacity and that my client was genuinely scared and genuinely
18 terrified. That was the whole point of this.

19 What we have here, your Honor, in a nutshell, is they
20 are asking you to find that conduct that constitutes extortion
21 under New York law, larceny by extortion, is not sufficiently
22 outrageous. The statute makes it plain that a person obtains
23 property by extortion when he compels or induces another person
24 to deliver such property to himself by means of installing in
25 him a fear that, if property is not so delivered, the actor or

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1 another will. And part 4 under that is, accuse some person of
2 a crime or cause criminal charges to be instituted against
3 him.

4 This is a felony. We are alleging that they have said
5 to him, Pay me \$83 million, to a stranger, to Sergey, to
6 Mr. Leontiev, to somebody who had no business dealings with
7 Mr. Leontiev himself. They admit in their answer, although it
8 really shouldn't be relevant there, but they admit in their
9 answer that Mr. Leontiev has never met this guy before. He
10 gets summoned to his office in a very high pressure situation,
11 and the guy says basically, Give me half your bank and I will
12 make your problems go away, and then he continues to pursue him
13 around the globe and to New York. And this is extortion under
14 New York law. It is -- the cases they cite --

15 THE COURT: I'm not sure this bears on anything, but
16 just out of curiosity, so have you reported this to the
17 criminal authorities?

18 MR. WEIGEL: We have not reported this to the criminal
19 authorities, no. But we believe we will be able to establish
20 these facts with a minimal amount of discovery.

21 The cases they cite, they talk about cases where there
22 is -- somebody makes a threat at a co-op board meeting or, in
23 the *Saleh* case, where they cite the court found that the
24 threats were not directed to the plaintiff in that case. There
25 is another case involving a Korean video store, where it is

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1 asserted that there was price fixing and they cite that case,
2 saying that evidence of a crime is not enough.

3 But the Second Circuit actually came up with a -- in
4 the *Stuto* case, *Stuto*, that none of us cite in our brief for
5 some reason, 164 F.3d 820 --

6 THE COURT: Wait a minute. This is a case that is not
7 cited?

8 MR. WEIGEL: Not cited in anybody's brief.

9 THE COURT: So hold on a minute. So did you alert
10 your adversary that you were going to refer to it today?

11 MR. WEIGEL: I did not, your Honor.

12 THE COURT: Well, you certainly didn't alert the
13 court. Why not? Why didn't you do that? How is he going to
14 be able to respond to a case he doesn't even know you were
15 going to cite?

16 MR. WEIGEL: Well, I did not understand that there was
17 going to be a question from your Honor about whether physical
18 harm was necessary, and this case makes it plain that physical
19 harm is not necessary. The Second Circuit -- it is a 1999
20 case -- just goes through the cases that identify --

21 THE COURT: To put your mind at rest, I wasn't
22 suggesting that physical harm was a *sine qua non*. I was asking
23 whether -- it seemed to me that that was an important element
24 in many of the cases that have survived because one can -- it
25 makes it a much easier situation to say that it is intolerable

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1 conduct of outrageous extreme and so forth if one goes and
2 makes a physical threat. But I agree with you that that is not
3 a requirement. So if that's all you were going to bring to my
4 attention, that's unnecessary.

5 MR. WEIGEL: Thank you, your Honor.

6 If you look at the *Mulberry Street v. Columbia*
7 *University* case that we cite, that was a case where there was
8 no threat of violence whatsoever. Some knuckleheaded Columbia
9 University professor decided to send letters to various
10 restaurants telling them that he got food poisoning, as part of
11 some research assignment, to find out how they would respond.
12 And the First Department --

13 THE COURT: I should note for the record that I am an
14 adjunct professor at Columbia University, but I have never
15 engaged in any such conduct.

16 MR. WEIGEL: Well, this is pretty knuckleheaded, and
17 the First Department held that that was a basis for an
18 intentional infliction of emotional harm. What we have here is
19 a situation where this conduct is continuous, it is a campaign,
20 and it is designed for one purpose, which is to make my client
21 pay \$83 million. These other -- if you look at the other
22 cases, and I will admit that there are clearly more cases that
23 dismiss than allow, but, your Honor, in the Syracuse University
24 case, *Ericson*, noting that it was a motion to dismiss, as we
25 are here, and quite a few of the cases that they cite are

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1 summary judgment cases, that the parties got an opportunity to
2 take the discovery to prove their case and then were unable to
3 do so.

4 We have not been able to find a single case where
5 there was effectively a scheme to extort money from someone,
6 which is what we are alleging, and I think at this point in
7 time, even with the benefit of an answer, they don't allege why
8 it is that this gentleman is entitled to collect this money on
9 the note, that they don't mention my client at all as the
10 borrower and, perhaps more importantly, don't mention him as a
11 lender. He doesn't assert anywhere that he has got a power of
12 attorney to collect this money or that he has gotten an
13 assignment of claims to collect this money. He has just come
14 and said, I am owed \$83 million. Pay it, or I am going to make
15 your life miserable. It is an extortion scheme and it is
16 illegal. We believe we will be able to prove that. We believe
17 that he made these threats.

18 We were very careful. We knew when we filed this that
19 this is a disfavored cause of action. But we believe that we
20 can establish these facts; and what we are really asking for,
21 your Honor, is a chance to take discovery to establish that in
22 fact he made these threats, he did it knowing that he didn't
23 have a personal basis for collecting this money, and that he
24 has made serious threats, and it is different --

25 THE COURT: With respect to the meeting at Gibson

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1 Dunn, if I understand what your allegations, he had already had
2 two extortionate meetings, meetings at which he was the victim
3 of extortion, under your view of it. So if he is feeling all
4 of this emotional distress and so forth, why is there a third
5 meeting set up by counsel?

6 MR. WEIGEL: Because we wanted it to stop. There were
7 repeated phone calls, particularly to Mr. Leontiev's business
8 partner, making all sorts of threats on a constant basis and we
9 want it to stop. And oftentimes our clients are more
10 comfortable with Gibson Dunn sitting next to them, and we were
11 going to have this meeting and see if we could make this stop.

12 THE COURT: Let me just ask a different question,
13 which is not before me today, but just so we don't have any
14 problems going forward, in addition to the parties themselves,
15 were there present at that meeting attorneys who are not
16 involved in the litigation of this case?

17 MR. WEIGEL: Yes, there is --

18 THE COURT: So if it comes to that, there are people
19 who can testify about what occurred at that meeting, other than
20 the parties themselves, without compromising counsel is really
21 what I am getting at.

22 MR. WEIGEL: Yes, your Honor, and I appreciate that,
23 and I did think of that. There are at least two individual who
24 could do that.

25 THE COURT: All right. I interrupted you. Go ahead.

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1 MR. WEIGEL: There is a one-year statute for this
2 offense and so when the Court of Appeals talks about, in the
3 Nader case, a continuing course of conduct, this is about as
4 long as it gets.

5 This started in August. It went from Moscow to London
6 to New York. They don't deny and they can't deny on this
7 motion that these threats were made, that it was an offer that
8 if we gave him half the bank, he would make the problems go
9 away; if we paid him \$40 million, he would make the problems go
10 away. They don't deny that he said, I am going to put you on a
11 terrorism watch list. They seem to say that's really not that
12 outrageous.

13 I would submit that when you read a lot of these
14 cases, as I have, the courts tend to be pretty practical here,
15 and they look at the cases where somebody mouths off at a co-op
16 board meeting and they say, that's really not enough. But this
17 is a very serious man who has enormous clout in Russia, who has
18 made real threats to my client, which has caused us to bring
19 this lawsuit, because we wanted these to get resolved in a
20 court where the rule of law applies as opposed to somewhere
21 else, and we wanted to make this stop, which is the whole point
22 of it.

23 As your Honor knows, we filed the motion. We asked
24 for an injunction. We want these threats to stop. He has
25 suffered, and we allege in the complaint that he has suffered a

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1 lack of sleep, anxiety. Damages, the cases, these allegations
2 are sufficient on the pleading stage. We will be able to prove
3 it at trial or they will have a chance to disprove it. But
4 this is the kind of damage that one has in this kind of a case,
5 and they really cannot dispute that this would be illegal. If
6 what we allege is true, that their conduct, threatening to file
7 a lawsuit, is different than actually just filing a lawsuit.
8 We as a society have made a determination that it is worse to
9 say to somebody, If you don't do this, if you don't pay me
10 money, I will reveal this, I will file this lawsuit. And the
11 *Posner* case in the Court of Appeals, which is another case I
12 realize that's not in the papers, the court makes reference to
13 the fact that --

14 THE COURT: Well, I will tell you what. I am going
15 to, since you seem to want to cite some cases that were not in
16 the briefs, I will, after this oral argument is concluded, give
17 each side the opportunity to send me a letter citing any
18 additional cases you want to cite, but I just want the
19 citations. No argument, just the citations.

20 MR. WEIGEL: Thank you, your Honor.

21 THE COURT: I should also mention, and I mention this
22 for the record but not because I consider it really of any
23 moment, so -- and this is a matter of public record, after the
24 United States banned I think it was 16 people from coming to
25 the United States from Russia as a result of the *Magnitsky*

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1 matter, the government of Russia banned 16 people from coming
2 from the United States to Russia. It was an interesting
3 collection of people. It included John Yoo, it included Preet
4 Bharara, and it also included me. So I thought about that when
5 I first got this case and concluded there was no basis for my
6 recusing myself on that ground, but I just mentioned it for the
7 record.

8 All right. Anything else?

9 MR. WEIGEL: Just, in particular, my colleague took
10 the position that the Court of Appeals had said that they have
11 never seen a case where this has been upheld. I would just
12 note that the cases that we are looking at, which were the
13 *Chanko* case, which involved ABC taking a video of somebody in
14 extremis and airing it, or the *Marmelstein* case, which involved
15 First Amendment issues and a rabbi and parishioner, in neither
16 of those cases was there any illegality, and I would submit
17 that --

18 THE COURT: You are not saying, are you, that an
19 allegation of illegality by itself is sufficient to state a
20 cause of action under this particular tort.

21 MR. WEIGEL: No. What I am saying is that cases
22 involving illegality directed at the plaintiff for a continuous
23 period of time, as cited by the *Nader* case in the Court of
24 Appeals, are in fact actionable under the statute.

25 THE COURT: Okay. Very good.

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1 Let me hear from defense counsel in rebuttal.

2 MR. HECKER: Your Honor, just briefly, because I think
3 the critical point is the one your Honor just made. There are
4 a number of cases that establish that illegal conduct itself
5 doesn't buy you an intentional infliction of emotional distress
6 claim. I think the *Saleh* case, which is cited in our papers,
7 it was in front of Judge Forrest, and there the allegations
8 were that government agents had tried to coerce someone in
9 intensive interrogation to cooperate in a terrorism
10 investigation by conspiring to deny him his permanent residency
11 and threatening to kill him, and that that wasn't sufficiently
12 extreme and outrageous. There the power dynamic of someone
13 being interrogated by FBI agents, I would submit, is far more
14 obviously at risk of causing extreme emotional distress than
15 what has been described here. And the *Marmelstein* case, which
16 involved allegations that an orthodox rabbi had abused a
17 position of trust, had a relationship with a congregant and
18 then had threatened to have her put in a straitjacket if she
19 disclosed the relationship, that wasn't held to be sufficient,
20 and that clearly constitutes criminal conduct. So I don't
21 think that the emphasis that plaintiff has put on that
22 particular issue is actually borne out in the case law. I
23 haven't seen a single statement suggesting otherwise. And I
24 don't hear counsel to be making that argument. But I think it
25 is important that the courts have actually said explicitly that

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1 illegal conduct itself doesn't get you over the bar.

2 So, look, I think the context here is quite important
3 and I do think the meeting arranged by counsel at Gibson Dunn
4 really puts the lie to any inference that their client had been
5 the subject of an extortion racket and then they invite him for
6 additional conversation about the debt, which is what the
7 complaint says. They brought him in to discuss the alleged
8 debt, and then they pressed him again for evidence after that
9 meeting. According to the complaint, evidence was provided.
10 And it doesn't take much imagination to understand that the
11 theory here is that Mr. Varshavsky, acting through the entity
12 that's listed in loan documents that have been attached to the
13 complaint, is claiming that Mr. Leontiev has control of the
14 money and that he controlled the entities that were the
15 borrowers of these loans. That's the only inference from the
16 back and forth that is laid out in the complaint and the
17 documents attached to the complaint.

18 So Mr. Leontiev wasn't picked out at random because he
19 was vulnerable, and they don't allege that he was. He knew
20 full well what was being ask discussed in terms of the debt.
21 And the debate was a legal one about whether he could be held
22 personally liable. Now, I understand we have denied them in
23 the answer, of course, the claims about the threats that were
24 made, but for purposes of this motion, accepting them as true,
25 I understand that that's the issue that they want to focus on,

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1 but the context of experienced commercial actors discussing a
2 debt really, I think, is the death knell for the claim in this
3 context.

4 THE COURT: All right. Well, thanks to both counsel
5 for an excellent argument.

6 Counsel are given leave to send to me by e-mail by
7 close of business tomorrow up to ten additional citations per
8 side. I hope you won't need that many, but if you want that
9 many, you can have it, bearing on the issues discussed today.
10 No argument, not even a parentheses, just the citations. If
11 you want, I will allow you the jump page to the page you think
12 is relevant, and then I will try to decide this promptly, not
13 least because we have another argument coming up I think in mid
14 September or something like that.

15 Very good. Thanks so much.

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